

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

HANK AARON MCLEMORE,

Plaintiff,

v.

**NANCY A. BERRYHILL,
Acting Commissioner of
Social Security Administration,**

Defendant.

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Case No. 15-CV-506-JHP-KEW

**ORDER AFFIRMING AND ADOPTING THE FINDINGS AND
RECOMMENDATION OF THE UNITED STATES
MAGISTRATE JUDGE**

On May 22, 2017, the United States Magistrate Judge entered a Findings and Recommendation in regard to Plaintiff's request for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d). The Magistrate Judge recommended that Plaintiff's Application (Dkt. 27) and Supplement to Application (Dkt. 30) be granted. The Commissioner filed an objection to the Magistrate Judge's Findings and Recommendation on May 23, 2017, and Plaintiff filed a response on May 26, 2017. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(a). On May 26, 2017, Plaintiff filed a second supplemental fee application (Dkt. 36), and on May 30, 2017, the Commissioner filed an objection to Plaintiff's second supplement (Dkt. 37).

This Court finds that the Findings and Recommendation of the Magistrate Judge is supported by the record. Therefore, upon full consideration of the entire record and the issues presented herein, the Court finds and orders that the Findings and Recommendation entered by the United States Magistrate Judge on May 22, 2017, be **AFFIRMED** and **ADOPTED** by this Court as its Findings and Order. It is **ORDERED** that Plaintiff's Application for Award of Attorney's Fees Under the Equal Access to Justice Act (Dkt. 27) and Plaintiff's Supplement to

Application for Award of Attorney's Fees Under the Equal Access to Justice Act to Include Fees for Legal Work on Fee Litigation (Dkt. 30) are **GRANTED**. In addition, Plaintiff's Supplement to Application for Award of Attorney's Fees Under the Equal Access to Justice Act to Include Fees for Legal Work on Fee Litigation (Dkt. 36) is reasonable and is hereby **GRANTED**. Accordingly, the Government is ordered to pay Plaintiff's attorney's fees in the total amount of \$5,872.30.

It is further **ORDERED** that the award in this case is to be made payable to Plaintiff, not Plaintiff's counsel, or jointly to Plaintiff and Plaintiff's counsel, as 28 U.S.C. § 2412(a)(1) and (d)(1)(A) provide for an award of costs and attorney's fees to a "prevailing party." Further, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. §406(b)(1), she shall refund the smaller award to the plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 18th day of December, 2017.


James H. Payne
United States District Judge
Eastern District of Oklahoma